

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

DAVID COLE,

Petitioner,

v.

MATTHEW CATE, Secretary,

Respondent.

Civil No. 12-0302 AJB (POR)

ORDER:

(1) SUA SPONTE SUBSTITUTING RESPONDENT; and
(2) GRANTING APPLICATION TO PROCEED IN FORMA PAUPERIS

Petitioner, a state prisoner proceeding pro se, has submitted a Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254, together with a request to proceed in forma pauperis.

SUBSTITUTION OF RESPONDENT

Petitioner named Timothy Busby, Warden as Respondent. It has come to the Court's attention that Mr. Busby was no longer the Warden at Ironwood State Prison as of November 2011. David Long was recently appointed Acting Warden of that correctional facility.

A writ of habeas corpus acts upon the custodian of the state prisoner. *See* 28 U.S.C. § 2242; Rule 2(a), 28 U.S.C. foll. § 2254. Because the warden at Petitioner's place of custody has changed, so has his custodian. Accordingly, in order to conform with the requirements of Rule 2(a) of the Rules Governing § 2254 Cases and to avoid changing the Respondent again if Petitioner is transferred to another prison or paroled, the Court hereby sua sponte **ORDERS** the substitution of Matthew Cate, Secretary of the California Department of Corrections and

1 Rehabilitation, as Respondent in place of "Timothy Busby." *See Ortiz-Sandoval v. Gomez*, 81
 2 F.3d 891, 894 (9th Cir. 1996) (stating that the respondent in § 2254 proceedings may be the chief
 3 officer in charge of state penal institutions); *see also* FED. R. CIV. P. 25(d)(1) ("When a public
 4 official is a party to an action in his official capacity and during its pendency dies, resigns, or
 5 otherwise ceases to hold office, the action does not abate and the officer's successor is
 6 automatically substituted as a party.") The Clerk of the Court shall modify the docket to reflect
 7 "Matthew Cate, Secretary" in place of the former respondent.

8 **MOTION TO PROCEED IN FORMA PAUPERIS**

9 Petitioner has \$0.00 on account at the California correctional institution in which he is
 10 presently confined. Petitioner cannot afford the \$5.00 filing fee. Thus, the Court **GRANTS**
 11 Petitioner's application to proceed in forma pauperis, and allows Petitioner to prosecute the
 12 above-referenced action as a poor person without being required to prepay fees or costs and
 13 without being required to post security. The Clerk of the Court shall file the Petition for Writ
 14 of Habeas Corpus without prepayment of the filing fee.

15 **IT IS SO ORDERED.**

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 17 DATED: February 6, 2012

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 19 Hon. Anthony J. Battaglia
 U.S. District Judge

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